

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-1211-PST-E TCEQ ID: RN102130598 CASE NO.: 36271
RESPONDENT NAME: LEONARD GARCIA

Page 1 of 3

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATIONS OCCURRED: 1220 North Garfield Street, San Angelo, Tom Green County</p> <p>TYPE OF OPERATION: Property with three inactive Underground Storage Tanks</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 20, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST:</p> <p style="margin-left: 20px;">TCEQ Attorney: Mr. Phillip M. Goodwin, Litigation Division, MC 175, (512) 239-0675 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p style="margin-left: 20px;">TCEQ Enforcement Coordinator: Mr. James Nolan, Air Enforcement Section, MC 149, (512) 239-6634</p> <p style="margin-left: 20px;">TCEQ Regional Contact: Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479</p> <p style="margin-left: 20px;">Respondent: Mr. Leonard Garcia, Owner, 2105 Webster Street, San Angelo, Texas 76901</p> <p style="margin-left: 20px;">Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: June 10, 2008 (investigation) July 21, 2008 (record review)</p> <p>Date of NOE Relating to this Case: June 24, 2008</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>Background Facts: The EDP RP was filed Dec. 23, 2008 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that the Respondent received notice of the EDP RP. The Respondent failed to answer the EDP RP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>PST:</p> <ol style="list-style-type: none"> Failed to notify TCEQ of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition [30 TEX. ADMIN. CODE § 334.7(d)(3)]. Failed to remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the UST system is not brought into timely compliance with the upgrade requirements, and failed to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons [30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b)(2)]. Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0042001U for fiscal years 1995 through 2006 [30 TEX. ADMIN. CODE § 334.22 and TEX. WATER CODE § 5.702]. 	<p>Total Assessed: \$16,800</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$16,800 This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days: <ol style="list-style-type: none"> Permanently remove the three USTs from service; and Submit payment for outstanding fees, including associated penalties and interest. Within 45 days, submit written certification to demonstrate compliance with these Ordering Provisions.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	1-Jul-2008	Screening	22-Jul-2008	EPA Due	
	PCW	24-Nov-2008				

RESPONDENT/FACILITY INFORMATION

Respondent	Leonard Garcia		
Reg. Ent. Ref. No.	RN102130598		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36271	No. of Violations	3
Docket No.	2008-1211-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	James Nolan
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$16,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$800
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Notes	Penalty enhancement due to one previous similar NOV.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$5,156
Approx. Cost of Compliance	\$10,100

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$16,800
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$16,800
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$16,800
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$16,800
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Screening Date 22-Jul-2008

Docket No. 2008-1211-PST-E

PCW

Respondent Leonard Garcia

Policy Revision 2 (September 2002)

Case ID No. 36271

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102130598

Media [Statute] Petroleum Storage Tank

Enf. Coordinator James Nolan

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

Penalty enhancement due to one previous similar NOV.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 22-Jul-2008		Docket No. 2008-1211-PST-E		PCW
Respondent Leonard Garcia		<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 36271		<i>PCW Revision June 12, 2008</i>		
Reg. Ent. Reference No. RN102130598				
Media [Statute] Petroleum Storage Tank				
Enf. Coordinator James Nolan				
Violation Number		<div style="border: 1px solid black; padding: 2px;">1</div>		
Rule Cite(s)		<div style="border: 1px solid black; padding: 2px;">30 Tex. Admin. Code § 334.7(d)(3)</div>		
Violation Description		<div style="border: 1px solid black; padding: 5px;">Failed to notify the agency of any change or additional information regarding the Underground Storage Tanks ("UST") within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the correct ownership information and current operational status of the three USTs at the facility.</div>		
Base Penalty				<div style="border: 1px solid black; padding: 2px;">\$10,000</div>

>> Environmental, Property and Human Health Matrix					
OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	
	Potential	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; padding: 2px;">0%</div>

>> Programmatic Matrix						
Matrix Notes	Falsification	Major	Moderate	Minor	Percent	
		x	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		<div style="border: 1px solid black; padding: 2px;">10%</div>
	100% of the rule requirement was not met.					<div style="border: 1px solid black; padding: 2px;">10%</div>
Adjustment				<div style="border: 1px solid black; padding: 2px;">\$9,000</div>		
					<div style="border: 1px solid black; padding: 2px;">\$1,000</div>	

Violation Events				
Number of Violation Events		<div style="border: 1px solid black; padding: 2px;">1</div>	<div style="border: 1px solid black; padding: 2px;">42</div>	Number of violation days
<i>mark only one with an x</i>	daily	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>	Violation Base Penalty <div style="border: 1px solid black; padding: 2px;">\$1,000</div>	
	monthly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	quarterly	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	semiannual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	annual	<div style="border: 1px solid black; width: 50px; height: 15px;"></div>		
	single event	<div style="border: 1px solid black; width: 50px; height: 15px; text-align: center;">x</div>		
One single event is recommended.				

Good Faith Efforts to Comply		0.0% Reduction	<div style="border: 1px solid black; padding: 2px;">\$0</div>
		Before NOV NOV to EDPRP/Settlement Offer	
Extraordinary	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	
Ordinary	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	<div style="border: 1px solid black; width: 100px; height: 15px;"></div>	
N/A	x	(mark with x)	
Notes		The Respondent does not meet the good faith criteria for this violation.	
Violation Subtotal			<div style="border: 1px solid black; padding: 2px;">\$1,000</div>

Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount	<div style="border: 1px solid black; padding: 2px;">\$4</div>	Violation Final Penalty Total	<div style="border: 1px solid black; padding: 2px;">\$1,050</div>
This violation Final Assessed Penalty (adjusted for limits)			<div style="border: 1px solid black; padding: 2px;">\$1,050</div>

Economic Benefit Worksheet

Respondent: Leonard Garcia
Case ID No.: 36271
Reg. Ent. Reference No.: RN102130598
Media: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	10-Jun-2008	9-Apr-2009	0.83	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The date required is the date of the investigation and the final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 22-Jul-2008		Docket No. 2008-1211-PST-E		PCW							
Respondent Leonard Garcia		<small>Policy Revision 2 (September 2002)</small>									
Case ID No. 36271		<small>PCW Revision June 12, 2008</small>									
Reg. Ent. Reference No. RN102130598											
Media [Statute] Petroleum Storage Tank											
Enf. Coordinator James Nolan											
Violation Number 2											
Rule Cite(s)		30 Tex. Admin. Code §§ 334.54(b)(2) and 334.47(a)(2)									
Violation Description		<p>Failed to permanently remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements and maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons. Specifically, three USTs have not been permanently removed from service and the fill ports and two sumps were not locked and were accessible.</p>									
Base Penalty				\$10,000							
>> Environmental, Property and Human Health Matrix											
OR	Harm										
	Major	Moderate	Minor								
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Actual</td> <td></td> <td></td> <td></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td style="text-align: center;">x</td> <td></td> <td></td> </tr> </table>			Actual				Potential	x		
Actual											
Potential	x										
>> Programmatic Matrix											
	Falsification	Major	Moderate	Minor							
					Percent 0%						
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.										
Adjustment				\$7,500							
				\$2,500							
Violation Events											
Number of Violation Events		6	Number of violation days								
		42									
<small>mark only one with an x</small>	daily										
	monthly	x									
	quarterly										
	semiannual										
	annual										
	single event										
Violation Base Penalty \$15,000											
<p>Six monthly events (two per UST) are recommended based on the two monthly periods between the investigation date (6/10/08) and screening date (7/22/08).</p>											
Good Faith Efforts to Comply		0.0% Reduction		\$0							
		Before NOV	NOV to EDPRP/Settlement Offer								
Extraordinary											
Ordinary											
N/A	x	(mark with x)									
Notes	The Respondent does not meet the good faith criteria for this violation.										
Violation Subtotal				\$15,000							
Economic Benefit (EB) for this violation		Statutory Limit Test									
Estimated EB Amount		\$5,152	Violation Final Penalty Total \$15,750								
This violation Final Assessed Penalty (adjusted for limits)				\$15,750							

Economic Benefit Worksheet

Respondent: Leonard Garcia

Case ID No. 36271

Reg. Ent. Reference No. RN102130598

Media: Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	22-Dec-1998	9-Apr-2009	10.30	\$5,152	n/a	\$5,152

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. The date required is the date when the Respondent was required to upgrade the UST system and the final date is based on the estimated compliance date.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$5,152

Screening Date 22-Jul-2008		Docket No. 2008-1211-PST-E		PCW																
Respondent Leonard Garcia		<small>Policy Revision 2 (September 2002)</small>																		
Case ID No. 36271		<small>PCW Revision June 12, 2008</small>																		
Reg. Ent. Reference No. RN102130598																				
Media [Statute] Petroleum Storage Tank																				
Enf. Coordinator James Nolan																				
Violation Number		<input type="text" value="3"/>																		
Rule Cite(s)		<input type="text" value="30 Tex. Admin. Code § 334.22(a) and Tex. Water Code § 5.702"/>																		
Violation Description		<input type="text" value="Failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0042001U for fiscal years 1995 through 2006."/>																		
Base Penalty				<input type="text" value="\$10,000"/>																
>> Environmental, Property and Human Health Matrix																				
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>					Harm			Release	Major	Moderate	Minor	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Harm																		
	Release	Major	Moderate	Minor																
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>																
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>																	
Percent <input type="text" value="0%"/>																				
>> Programmatic Matrix																				
Matrix Notes	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Falsification</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>					Falsification	Major	Moderate	Minor	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>							
		Falsification	Major	Moderate	Minor															
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>																
	Percent <input type="text" value="0%"/>																			
<input type="text" value="There is no administrative penalty assessed for past due fees."/>																				
Adjustment				<input type="text" value="\$10,000"/>																
				<input type="text" value="\$0"/>																
Violation Events																				
Number of Violation Events		<input type="text"/>	Number of violation days <input type="text"/>																	
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$0"/>																	
	monthly	<input type="text"/>																		
	quarterly	<input type="text"/>																		
	semiannual	<input type="text"/>																		
	annual	<input type="text"/>																		
	single event	<input type="text"/>																		
<input type="text" value="No penalty is assessed because all penalties and interest will be assessed by the Financial Administration Division in the next billing cycle."/>																				
Good Faith Efforts to Comply		0.0% Reduction		<input type="text" value="\$0"/>																
		Before NOV	NOV to EDPRP/Settlement Offer																	
Extraordinary		<input type="text"/>	<input type="text"/>																	
Ordinary		<input type="text"/>	<input type="text"/>																	
N/A		(mark with x)																		
Notes		<input type="text"/>																		
Violation Subtotal				<input type="text" value="\$0"/>																
Economic Benefit (EB) for this violation		Statutory Limit Test																		
Estimated EB Amount <input type="text" value="\$0"/>		Violation Final Penalty Total <input type="text" value="\$0"/>																		
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$0"/>																

Economic Benefit Worksheet

Respondent: Leonard Garcia

Case ID No. 36271

Reg. Ent. Reference No. RN102130598

Media: Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

No economic benefit is associated with this violation.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator: CN601159098 GARCIA, LEONARD Classification: AVERAGE Rating: 3.01
Regulated Entity: RN102130598 WESTSIDE SHAMROCK Classification: AVERAGE BY Site Rating: 3.01
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 8230
Location: 1220 N GARFIELD ST, SAN ANGELO, TX, 76901 Rating Date: September 01 07 Repeat Violator: NO
TCEQ Region: REGION 08 - SAN ANGELO
Date Compliance History Prepared: July 22, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 22, 2003 to July 22, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: James Nolan Phone: (512) 239-6634

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- 1 03/28/2008 (640488)
- 2 06/25/2008 (682727)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 03/28/2008 (640488)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)

Description: Failure to provide amended registration for any change or additional information regarding UST's within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition, as applicable.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)

Description: Failure to assure that the vent lines are kept open and functioning and, all piping, pumps, manways, and ancillary equipment shall be capped, plugged, locked, and/or otherwise secured to prevent access, tampering, or vandalism by unauthorized persons. This shall be done beginning no later than the date on which the UST system has been out of service for a continuous period of three (3) months, regardless of whether or not regulated substances remain in the UST system.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)

Description: 30 TAC 334.47 (a)(2) Failure to perform the temporary or permanent removal of a UST system.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
LEONARD GARCIA,
RN102130598**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-1211-PST-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 5, 7 and 26 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Leonard Garcia ("Mr. Garcia").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Garcia owns property with three inactive Underground Storage Tanks ("USTs") located at 1220 North Garfield Street, San Angelo, Tom Green County, Texas (the "Facility").
2. Mr. Garcia's three underground storage tanks are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. Mr. Garcia's USTs contain a regulated substance as defined in the rules of the Commission.
3. During an investigation conducted on June 10, 2008, a TCEQ San Angelo Regional Office investigator documented that Mr. Garcia:
 - a. Failed to notify TCEQ of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition.
 - b. Failed to remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the UST system is not brought into timely compliance with the upgrade requirements and failed to maintain all piping, pumps, manways, tank access points and ancillary

equipment in a capped, plugged, locked, and otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons.

4. During a record review conducted on July 21, 2008, a TCEQ San Angelo Regional Office investigator documented that Mr. Garcia failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0042001U for fiscal years 1995 through 2006.
5. Mr. Garcia received notice of the violation on or about June 30, 2008.
6. The Executive Director recognizes that Mr. Garcia does not currently possess a current, valid UST delivery certificate.
7. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Leonard Garcia" (the "EDPRP") in the TCEQ Chief Clerk's office on December 23, 2008.
8. By letter dated December 23, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Garcia with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Garcia received notice of the EDPRP.
9. More than 20 days have elapsed since Mr. Garcia received notice of the EDPRP provided by the Executive Director. Mr. Garcia failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Garcia is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5, 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Garcia failed to notify TCEQ of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3).
3. As evidenced by Finding of Fact No. 3.b., Mr. Garcia failed to remove from service, no later than 60 days after the prescribed implementation date, three USTs for which any applicable component of the UST system is not brought into timely compliance with the upgrade

requirements and failed to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons, in violation of 30 TEX. ADMIN. CODE §§ 334.47(a)(2) and 334.54(b)(2).

4. As evidenced by Finding of Fact No. 4., Mr. Garcia failed to pay outstanding UST fees and associated late fees for TCEQ Financial Account No. 0042001U for fiscal years 1995 through 2006, in violation of 30 TEX. ADMIN. CODE § 334.22(a) and TEX. WATER CODE § 5.702.
5. As evidenced by Finding of Fact Nos. 7 and 8, the Executive Director timely served Mr. Garcia with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 9, Mr. Garcia failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Garcia and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Garcia for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of sixteen thousand eight hundred dollars (\$16,800.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Garcia is assessed an administrative penalty in the amount of sixteen thousand eight hundred dollars (\$16,800.00) for violations of state statutes and TCEQ rules. The payment of

this administrative penalty and Mr. Garcia's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Leonard Garcia; Docket No. 2008-1211-PST-E." to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Mr. Garcia shall undertake the following technical requirements:

- a. Within 30 days after the effective date of the Commission Order, Mr. Garcia shall:
 - i. Permanently remove the three USTs from service, in accordance with 30 TEX. ADMIN. CODE § 334.55.
 - ii. Submit payment for outstanding fees, including any associated penalties and interest, with the notation, "Leonard Garcia, TCEQ Financial Account No. 0042001U" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

- b. Within 45 days after the effective date of the Commission Order, Mr. Garcia shall submit written certification as described below and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals

immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Mark Newman, Waste Section Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Garcia. Mr. Garcia is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Garcia fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Garcia's failure to comply is not a violation of this Order. Mr. Garcia shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Garcia shall notify the Executive Director within seven days after Mr. Garcia becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Garcia shall be made in writing to the Executive Director. Extensions are not effective until Mr. Garcia receives written

approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Garcia if the Executive Director determines that Mr. Garcia has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF PHILLIP M. GOODWIN

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Phillip M. Goodwin. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Leonard Garcia” (the “EDPRP”) was filed with the Office of the Chief Clerk on December 23, 2008.

I sent the EDPRP to Leonard Garcia at his last known address on December 23, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Garcia received notice of the EDPRP.

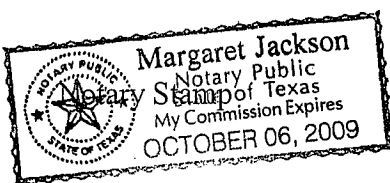
More than 20 days have elapsed since Mr. Garcia received notice of the EDPRP. Mr. Garcia failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.

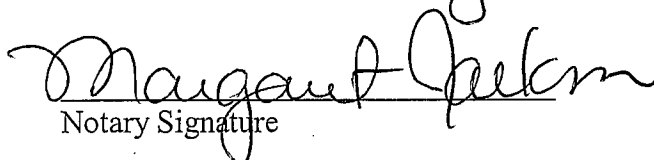


Phillip M. Goodwin
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Phillip M. Goodwin, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 12 day of February, A.D., 2009.





Notary Signature